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In The
Supreme Court of the United States
October Term, 1987

STATE OF CALIFORNIA, ET AL.,
Petitioners,
vs.
UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Writ of Certiorari to the California Supreme Court

AMICI CURIAE BRIEF OF STATES OF KANSAS, NEBRASKA, NEVADA, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, WASHINGTON, AND WYOMING IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the United States constitutionally may assert riparian water rights held by ordinary landowners under state law.

2. Whether federal land laws that encouraged settlement of the arid West terminated any common law water rights held by the United States for its lands.

3. Whether the United States can assert common law riparian water rights for wildlife purposes on national forest land in light of this Court's decision in *United States v. New Mexico*, 438 U.S. 696 (1978).

TABLE OF CONTENTS

Page

STATEMENT OF INTEREST OF AMICI CURIAE 1

ARGUMENT

I. THE UNITED STATES' PROPRIETARY WATER RIGHTS IN FEDERAL LAND ARISE UNDER FEDERAL LAW, AND ARE LIMITED TO RESERVED WATER RIGHTS. 7

II. FEDERAL LANDS LAWS, SPECIFICALLY THE DESERT LAND ACT OF 1877, "SEVERED" THE LAND AND PROPERTY ESTATES IN FEDERAL LAND. 10

III. THE STATUTE UNDER WHICH THE UNITED STATES ASSERTS RIPARIAN WATER RIGHTS FOR WILDLIFE PURPOSES IN THE PLUMAS NATIONAL FOREST, THE ORGANIC ADMINISTRATION ACT OF 1897, HAS BEEN INTERPRETED BY THIS COURT TO PRECLUDE RECOGNITION OF RIPARIAN RIGHTS FOR WILDLIFE PURPOSES. 14

IV. THE RULING OF THE CALIFORNIA SUPREME COURT IN THE INSTANT CASE IS CONTRARY TO THE INTERESTS OF SOUND PUBLIC POLICY AND SHOULD BE REVIEWED AND REVERSED. 18

CONCLUSION 21

TABLE OF AUTHORITIES

Page

CASES

Arizona v. California, 373 U.S. 546 (1963) 15

Arizona v. California, 460 U.S. 605 (1983) 6

Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983) 6

Barney v. Keokuk, 94 U.S. 324 (1876) 2

California v. United States, 438 U.S. 645 (1978) 4, 5, 19

California-Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935) 5, 6, 11, 12, 13, 14

Camfield v. United States, 167 U.S. 518 (1897) 8, 9

Cappaert v. United States, 426 U.S. 128 (1976) 8, 13, 14

Federal Power Comm'n v. Oregon, 349 U.S. 435 (1946) 12, 13, 14

Gibbons v. Ogden, 22 U.S. 1 (1824) 7

Gilman v. Philadelphia, 70 U.S. 713 (1866) 7

Kleppe v. United States, 426 U.S. 529 (1976) 8, 9

Nevada v. United States, 463 U.S. 110 (1983) 6

The Propeller Genesee Chief v. Fitzhugh, 53 U.S. 443 (1851) 2

United States v. New Mexico, 438 U.S. 696 (1978) 5, 13, 14, 15, 16, 17, 18, 19

Winters v. United States, 207 U.S. 564 (1908) 15

STATUTES

Federal Power Act of 1920 § 791a-828c, 821 5

16 U.S.C. § 473 *et seq.* 14

Water Conservation Act of 1939, 16 U.S.C. § 590y-590z-11, 590z-1(b)(2) 5

TABLE OF AUTHORITIES—Continued

Page

Desert Land Act of 1877, 19 Stat. 377 (1877), 43 U.S.C. § 321 ..... 4, 11

Reclamation Act of 1902, 43 U.S.C. § 371-600e, 383 5

Mining Act of 1866, 14 Stat. 251 (1866), 43 U.S.C. § 661 ..... 4, 11

UNITED STATES CONSTITUTION

U.S. Const. Art. I. § 8 ..... 7, 8

U.S. Const. Art. IV, § 3 8

OTHER AUTHORITIES

F. TRELEASE, FEDERAL-STATE RELATIONS IN WATER LAW 42-43 (1971) 10

F. Trelease, "Uneasy Federalism—State Water Laws and National Water Uses," 55 WASH. L. REV. 751, 754 (1980) 3

1 HUTCHINS, WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES 6-14, 159-179, 226-236 (1971 ed.) 2

1 W. HUTCHINS, WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES 186-223 4

1 WATERS AND WATER RIGHTS 29-36 (R. Clark ed., 1978 Supp.) 2

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STATEMENT OF INTEREST OF AMICI CURIAE

Water is a vital resource. Laws governing its use are deeply rooted in the legal history of the United States. These laws are based on two legal theories: the riparian doctrine and the doctrine of prior appropriation.

The similarity to England of the climate and topography of the eastern states led early American colonizers to institute traditional English water laws and customs, based upon the riparian doctrine, as their state water law. Under this doctrine the sovereign held the equivalent of

water rights to navigable waters. Private land owners, as an incident of land ownership, could use water located on their land to the extent that the flow of navigable waters remained undiminished. Such water rights were known as riparian rights.

Under the riparian doctrine the strict protection of natural flow, which could severely restrict water use by riparian water right holders, evolved to allow reasonable use. Also, the definition of navigability changed. *See The Propeller Genesee Chief v. Fitzhugh*, 53 U.S. 443 (1851); *Barney v. Keokuk*, 94 U.S. 324 (1876). One thing which remained constant was the fundamental common law principle that riparian water rights existed as an incident of land ownership. Today, the eastern states rely generally upon riparian water law. 1 WATERS AND WATER RIGHTS 29-36 (R. Clark ed., 1978 Supp.).

The history of the water law of the states lying west of the ninety-eighth meridian is markedly different than in the East. The single most important difference relates to climate and geography. Relatively slight precipitation has meant fewer water courses in the West, which in turn has increased the need to divert water to areas of use. These diversions may be made by non-riparian (non-adjacent) land owners for use on non-riparian lands, as long as water is put to beneficial use as defined by state law. By using laws based largely on the appropriation doctrine, western states were thus able to efficiently manage their water resources. The beneficial use requirement meant that water rights issued in prior appropriation states came to depend not on land ownership but on establishment of a water right under state statutory law. 1 HUTCHINS,

WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES 6-14, 159-179, 226-236 (1971 ed.).

The current water law in the western states continues to be based generally on prior appropriation principles. This law vests broad control in the states to manage their water resources. Frank Trelease, one of the most respected commentators on western water law, has written:

> "Modern state water codes superimpose a layer of administrative law on . . . property law. Rights are no longer created solely at the will of the appropriator; now the state must concur. Today's appropriator applies for a permit to construct the works and to use the water, and a state official or agency decides whether there is unappropriated water for the use and whether the use is beneficial. The state officials determine the amount of water needed for the use and oversee the construction of the works. Most important, a new requirement has been added: the state agency may deny the application if to grant the permit would be 'contrary to the public interest.' The agencies and the courts have developed this into a very important policy which has enabled them to control water use with surprisingly modern and sophisticated economic concepts . . . (Appropriative) water law is thus a planning tool, a guide to action, an aid to decision. [Citations omitted.]" F. Trelease, "Uneasy Federalism—State Water Laws and National Water Uses," 55 WASH. L. REV. 751, 754 (1980)

Some less arid western states which implemented the appropriation doctrine as their water law also recognized common law riparian water rights. These states, which border the Pacific Ocean (Alaska, California, Hawaii, Oregon, and Washington) or are part of the High Plains (Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas), developed a dual water right system,

recognizing both common law riparian rights and statutory appropriative rights. Today these two doctrines have been integrated, in varying degrees, in these states. 1 W. HUTCHINS, WATER RIGHTS LAWS IN THE NINETEEN WESTERN STATES 186-223.

Even before passage of these state laws, Congress deferred to local law for the regulation of water resources. This Court has noted:

> ". . . the doctrine of prior appropriation, linked to the beneficial use of the water, arose through local customs, laws, and judicial decisions. Even in th(e) early stage of the development of Western water law, before many of the Western States had been admitted to the Union, Congress deferred to the growing local law." *California v. United States*, 438 U.S. 645, 653, 654 (1978).

As western appropriation systems developed further and became more refined, Congress continued its deference. In the Mining Act of 1866, 14 Stat. 251 (1866), 43 U.S.C. § 661, Congress confirmed water rights for mining, agriculture, and other uses which had been acquired by private parties on public land under local customs, laws, and court decrees. In the Desert Land Act of 1877, 19 Stat. 377 (1877), 43 U.S.C. § 321, Congress declared that water rights in arid western lands depended upon the prior appropriation doctrine. By way of this Act, past and future appropriations of water on public lands which had been made pursuant to local procedures under state laws were re-confirmed. Indeed, as the amici states point out more fully later in this brief, Congress' intent in the passage of this Act was to sever the land and water estates in the public domain, and to direct that water rights be

established under state law pursuant to prior appropriation principles and independently of rights to land. This Court formally recognized such intent in *California-Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935).

This consistent and purposeful deference has existed because the federal government recognized the utility of state systems of water law. Such deference has been particularly important in the West where water is scarce, water related controversies are all too common, and large blocks of land are federally owned and controlled. Historically, Congress has included disclaimer clauses in major federal legislation with the potential to disrupt state water law. These clauses require federal officials and private individuals with delegated federal authority, to obtain water rights in conformance with state law. *See, e.g.*, Reclamation Act of 1902, 43 U.S.C. §§ 371-600e, 383; Federal Power Act of 1920 § 791a-828c, 821; and Water Conservation Act of 1939, 16 U.S.C. § 590y-590z-11, 590z-1(b)(2).

This Court's recent decisions related to western water law have reaffirmed the need to ensure predictability and certainty with respect to the administration of state water rights laws. For example, in *California v. United States, supra*, 438 U.S. 645, this Court held that Section 8 of the Reclamation Act required the United States to acquire water rights under state *appropriation* laws, except where such laws are inconsistent with "specific Congressional directives." 438 U.S. at 672-679. In the same term, the Court adopted a narrow definition of the scope of federal reserved water rights for national forests. *United States*

v. New Mexico, 438 U.S. 696 (1978). More recently this Court declined to reopen a settlement of water rights under state law which included Indian rights, even though the Indian tribe had not participated as a party in the suit which led to the original decree. *Nevada v. United States,* 463 U.S. 110 (1983). Also, this Court refused to augment the quantity of an Indian tribe's reserved water right for lands omitted in the original determination of those rights. *Arizona v. California,* 460 U.S. 605 (1983). Also, this Court put to rest a jurisdictional battle which has been waged for many years concerning which forum, state or federal, should be used to determine water rights in the West. The Court held in favor of the state forum. *Arizona v. San Carlos Apache Tribe,* 463 U.S. 545 (1983). These decisions recognized the need for finality in the allocation of water under state law.

These decisions not only underscore the importance of predictability in water resource management, particularly in the arid West, but also highlight the delicate balance which has been struck regarding such management. The California Supreme Court's ruling in the decision below creates a water right never before recognized nor intended by Congress or this Court. It thus disturbs this balance and runs contrary to this Court's recent emphasis on certainty with respect to western water law generally. More importantly, it misconstrues the incidents of federal land ownership. Further, it is at odds with this Court's ruling in *California-Oregon Power Co. v. Beaver Portland Cement Co., supra,* 295 U.S. 142. The effect is to allow the United States to circumvent the appropriation process, thus impairing California's ability to manage water resources. In so doing, the decision presents novel

interpretations of federal law which should be reviewed by this Court. The concerns of the amici states with the implications of the ruling lead them to urge that California's petition for writ of certiorari be granted.

ARGUMENT

I. THE UNITED STATES' PROPRIETARY WATER RIGHTS IN FEDERAL LAND[1] ARISE UNDER FEDERAL LAW, AND ARE LIMITED TO RESERVED WATER RIGHTS.

It is axiomatic that the federal government is one of limited and enumerated powers. These powers derive specifically from the provisions of the United States Constitution. The Constitution nowhere mentions "water," yet some federal powers enable the United States to engage in water-related activities. For example, the commerce power, U.S. Const., Art. I, § 8 has been interpreted to include "transportation" which, in turn, includes "navigation" *Gibbons v. Ogden*, 22 U.S. 1 (1824). The power to regulate navigation was expanded to include the power to control navigable waters. *Gilman v. Philadelphia*, 70 U.S. 713 (1866).

The California Supreme Court correctly noted in its opinion below that, "A close reading of United States Su-

[1]The references to "federal lands" in this brief refer to lands originally owned by the United States. While the incidents of ownership of all federal lands must be defined in the first instance by reference to federal law, those incidents may be different as between land originally owned by the United States and land acquired by the United States from a non-federal owner.

preme Court decisions involving water rights disputes between the states and federal government reveals that the court has consistently premised its holdings on sovereign rights, rather than proprietary interests, of the United States." California Petition for Writ of Certiorari, A-8, 9. The "sovereign rights," or constitutional powers, which have formed the basis for the creation of federal water rights are those contained in the Property Clause of the U.S. Constitution, U.S. Const., Art. IV, § 3, together with the Commerce Clause, U.S. Const., Art. I § 8. *See Cappaert v. United States,* 426 U.S. 128, 129 (1976). Because the federal government's power to own and control land is constitutionally derived, the United States is a unique property owner.

In its decision in the instant case, the California Supreme Court cited *Kleppe v. United States,* 426 U.S. 529 (1976), and *Camfield v. United States,* 167 U.S. 518 (1897), for the proposition that the proprietary rights of the federal government are precisely the same as those of ordinary land owners. In *Kleppe* this Court held that Congress has constitutional power under the Property Clause to enact legislation regulating wild horses and burros on public lands. In so ruling, the Court noted that Congress exercises the powers of both a proprietor and a legislature over the public domain.

Obviously, the sovereign or constitutional power exercised under the Property Clause is, in some respects, analogous to the rights of ordinary land owners. To recognize this, however, as the Court did in *Kleppe,* is not a determination that the property rights of the United States are exactly the same as the common law property

rights of ordinary land owners. The *Kleppe* decision was concerned with the power of the federal government to regulate with respect to public lands, not with the incidents of the government's land ownership.

Camfield v. United States held that Congress has the constitutional authority under the Property Clause to enact legislation prohibiting fencing on public lands. This authority, the Court reasoned, was analogous to the rights of ordinary land owners to exclude trespassers. In dictum, the Court stated that the United States may deal with its land ". . . precisely as a private individual may deal with his farming property." 167 U.S. at 524.

Again, there can be no argument that some of the federal government's rights are analogous to those of private landowners. However, because the property rights of the United States are defined by reference to federal law, such rights are inherently and undeniably different from those of ordinary land owners whose rights arise under state common law. Whether the federal government acts as a proprietor or a legislator it acts pursuant to its federal authority. Its property rights are based on federal law and have little to do with state common law. The key is the source from which the proprietary rights derive. The property rights of private owners derive from local common law. The property rights of the federal government, on the other hand, derive from federal law.

The California Supreme Court, in its opinion below, quotes the writings of the late Professor Frank Trelease. Professor Trelease wrote specifically of the authority of the United States under the Property Clause to establish water rights for federal lands. He stated:

> "Far more important are the areas, large in total, that the federal government owns as a proprietor, and upon which it exercises governmental functions. The United States is not an ordinary land owner. It has special powers and immunities with respect to its real property and its operations on it, not possessed by ordinary land owners. The special powers and immunities spring from the property clause . . . . [Citations omitted.]" F. Trelease Federal-State Relations in Water Law 42-43 (1971)

This Court has consistently looked to federal law, rather than local law, to determine the water rights which exist as incidents of federal land ownership. Furthermore, it has defined such incidents solely in relation to reserved water rights to meet primary purposes of federal reservations. It has further stated that federal law requires that, in the West, state appropriative water rights must be obtained for other reservation purposes. Federal reserved rights, discussed in more detail in a subsequent section of this brief, are the constitutional equivalent of common law riparian water rights recognized under state law. There is no federal legal basis, either in the Constitution or the federal law passed pursuant to it, which sanctions riparian rights for federal lands under state common law.

II. FEDERAL LAND LAWS, SPECIFICALLY THE DESERT LAND ACT OF 1877, "SEVERED" THE LAND AND PROPERTY ESTATES IN FEDERAL LAND.

In the latter part of the last century Congress enacted a number of federal land laws designed to entice U.S. citizens to "tame" the West by developing and inhabiting the public domain. These laws helped America

fulfill its "manifest destiny." They provided, for example, that an individual could acquire ownership of a tract of land by successfully developing a mining claim located on it. The Mining Act of 1866, 14 Stat. 251 (1866), 43 U.S.C. § 661. Another method of acquiring land ownership was through farming under the Desert Land Act of 1877, 19 Stat. 377 (1877), 43 U.S.C. § 321. Pursuant to this law individuals acquired land for payment of 25 cents per acre by "conducting water upon the same . . ." and successfully cultivating it. This Act specifically provided that the water used for irrigation must "depend upon bona fide prior appropriation." It went on to state that:

> ". . . all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not-navigable, shall remain and be held free for the appropriation and use of the public irrigation, mining and manufacturing purposes. . . ." 43 U.S.C. § 321.

This Court considered the significance of the language requiring surplus water to be "free for the appropriation and use of the public." It stated:

> "If this language is to be given its natural meaning . . . it effected a severance of *all waters* upon the public domain, not theretofore appropriated, from the land itself. From that premise, it follows that a patent issued thereafter for lands in a desert-land state or territory . . . carried with it, of its own force, no common law right to water flowing through or bordering upon the lands conveyed." *California Oregon Power Co. v. Beaver Portland Cement Co., supra*, 295 U.S. at 158 (emphasis added).

Thus, the effect of the Desert Land Act and, likely, the Mining Act as well, was to sever "*all* waters upon the

public domain" from the land in the arid western United States and territories. As a result of this severance, water on public land was "free for . . . appropriation" under state water law.

In the instant case the United States denies that the Desert Land Act severed the land and water estates in the West. It argues instead that the severance occurred on an ad hoc basis where land patents were perfected. Otherwise, the United States asserts, it retained common law riparian property rights. The California Supreme Court was persuaded by the United States' argument. It disregarded the *Beaver Portland Cement Co.* ruling because, it noted, that case dealt only with the rights of federal patentees, not the rights of the government itself. California Petition for Writ of Certiorari, A-18. However, the Desert Land Act stated that "*all* surplus waters"not actually appropriated by a patentee shall "remain and be held free for the appropriation and use of the public." This Court interpreted that language as severing all waters on the public domain.

The California Supreme Court cited *Federal Power Comm'n v. Oregon* in support of its conclusions. This Court there upheld a ruling of the Federal Power Commission granting a license for a power project to use non-navigable waters located on a federal reservation in Oregon. This was done notwithstanding the objection of the state, and others. One of Oregon's arguments was that its consent to the project must be granted because the Desert Land Act delegated to states the authority to regulate non-navigable waters within their borders. This Court responded "it is enough, for the instant case, to recognize

that these acts do not apply to this license, which relates only to the use of waters on reservations of the United States." 349 U.S. at 448. While this ruling offers some support for the California Supreme Court's ruling below, this Court subsequently changed its view concerning the relationship between the Desert Land Act and federal reservations.

In *United States v. New Mexico, supra,* 438 U.S. 696, this Court narrowly construed the reservation doctrine to apply only to the primary reservation purposes. Water "valuable" for secondary uses must, in the words of this Court, be "acquire(d) . . . in the same manner as any other public or private *appropriat(ion).*" 438 U.S. at 702 (emphasis added). This Court reached its holding after reviewing several Congressional statutes, including the Desert Land Act. It noted that these statutes substantiate the "inference" that the federal government must obtain water rights for secondary reservation purposes under state appropriation laws. Thus, the Court reached a conclusion which is consistent with the severance of land and water estates recognized in the *Beaver Portland Cement Co., supra,* 295 U.S. 142 decision. In so doing this Court implicitly modified its dicta in *Federal Power Comm'n v. Oregon, supra,* 349 U.S. 435, and in *Cappaert v. United States,* 426 U.S. 128 (1976), concerning the application of the Desert Land Act to lands reserved from the public domain, because the *New Mexico* opinion can be read harmoniously with the two earlier opinions only if such a modification is assumed. The amici states submit that this Court should review the instant decision to consider and clearly resolve the apparent conflict be-

tween the dicta in *Cappaert, Federal Power Comm'n v. Oregon,* and the holding of *New Mexico.* Further, the implication of these three rulings as it relates to this Court's ruling in *Beaver Portland Cement Co.* should be reviewed.

III. THE STATUTE UNDER WHICH THE UNITED STATES ASSERTS RIPARIAN WATER RIGHTS FOR WILDLIFE PURPOSES IN THE PLUMAS NATIONAL FOREST, THE ORGANIC ADMINISTRATION ACT OF 1897, HAS BEEN INTERPRETED BY THIS COURT TO PRECLUDE RECOGNITION OF RIPARIAN RIGHTS FOR WILDLIFE PURPOSES.

The federal lands which comprise the Plumas National Forest were reserved from the public domain under the Organic Administration Act of 1897. 30 Stat. 34, 16 U.S.C. §§ 473 *et seq.* This Act authorized the reservation of public lands for national forest service purposes. In *United States v. New Mexico, supra,* 438 U.S. 696, this Court held that no federal reserved water right existed under the Organic Administration Act for any of the secondary purposes for which the forest reservations were made. These include the "wildlife protection" purposes which the United States claims as the basis of its riparian water right in the instant case. This Court reached its conclusion based on a number of factors. One was the underlying tenet that restricting the reserved right to primary reservation purposes would augment the quantity of water available to western settlers. The Court noted ". . . Congress authorized the national forest system principally as a means of enhancing the quantity of water that would be available to the settlers of the arid West." 438 U.S. at 713. To recognize reserved water rights for other national forest service purposes, however important, would

have, "defeat(ed) the very purpose for which Congress . . . create(d) the national forest system." *Id.* at 711, 712.

The theory on which the reserved rights doctrine rests clarifies the Court's ruling in *New Mexico.* It is a constitutionally premised ". . . doctrine built on implication and . . . an exception to Congress' explicit deference to state water law in other areas." 438 U.S. at 715. The reserved rights doctrine was first established in *Winters v. United States,* 207 U.S. 564 (1908), and applied to Indian reservations. In *Arizona v. California,* 373 U.S. 546 (1963), it was extended to all federal reservations.

In the *Winters* case, this Court was also presented with the argument that the federal government held riparian rights as part of its ownership of federal land. This Court chose not to recognize such riparian rights, but opted instead to create federal reserved water rights for the Indian reservation in question. *Winters v. United States, supra,* 207 U.S. at 578. Indeed, one must infer from *Winters* that the implied reserved water rights doctrine would not have been deemed necessary if the government held riparian rights; that is, if the public land laws of the nineteenth century had not severed from federal land whatever riparian water rights the federal government once held. But this severance had taken place and the *Winters* Court therefore created the reservation doctrine as the basis for federal water rights.

In again asserting a riparian right in addition to reserved rights, the United State's claim in the instant case falls clearly outside of the scope of federal water rights as enunciated by this Court. Especially in light of this Court's holding in *New Mexico, supra,* 438 U.S. 696, it is

simply too late for the United States to assert a new common law water right as an incident of land ownership. This Court has specifically ruled that any rights other than reserved rights must be obtained under state appropriative water law.

To uphold the government's claim would be to compound the problems created for western water managers by the reservation doctrine. This is so because:

> "In the . . . West . . . claims to water for use on federal reservations inescapably vie with other public and private claims for the limited quantities to be found in the rivers and streams. This competition is compounded by the sheer quantity of reserved lands in the Western States, which lands form brightly colored swaths across the maps of these States." *New Mexico*, 438 U.S. at 699.

In part because of these problems, this Court chose to limit the extent of this "exceptional" doctrine to primary reservation purposes.

In the instant case, the United States asserts a nonreserved common law water right for exactly the same secondary reservation purposes for which this Court has explicitly declined to recognize a reserved water right. This Court has ruled that Congress intended to maximize the quantity of water available to settlers of the West, and specifically that Congress demonstrated no intent to reserve water for wildlife purposes. It is therefore difficult to imagine that the Congress intended for the United States to claim common law riparian water rights for those same purposes where such riparian rights have exactly the same effect as reserved rights; that is, to limit the quantity of water available to settlers in the West. It

appears that the United States simply refuses to recognize the reality of this Court's holding in *New Mexico*. The United States should not be allowed to circumvent Congressional policy and the rulings of this Court simply by modifying the name of the water right it asserts.

The California Supreme Court quoted this Court's language in *New Mexico* requiring that water for secondary reservation purposes be acquired by appropriation, and then asserted that the "principle of deference to state law logically extends to any water rights recognized under local law—including riparian rights." California Petition Writ of Certiorari, A-11. Such analysis utterly fails to recognize the differences between appropriative and riparian water rights. First, as explained earlier, a riparian right is the common law equivalent of a reserved right under federal law. It arises as a result of ownership of land, and no beneficial use is required. It is in these respects antithetical to an appropriate right.

With regard to appropriate rights the United States must stand in line with other appropriators. It must have its claims weighed according to public interest values which figure in the appropriation process, be bound by all appropriation laws and principles, and accept its position in priority with respect to other appropriators. The state's role in this process of defining and granting appropriative rights is active and assertive. With riparian rights on the other hand, the state exercises a much lesser role.

Given these differences, it is fair to assume that this Court in *New Mexico* chose its words carefully when it held that with respect to water "valuable" for secondary purposes, the United States must acquire it "in the same man-

ner as any other public or private *appropriator.*" 438 U.S. 702 (emphasis added).

To now hold otherwise would be to recognize an enormous block of heretofore unexercised riparian rights creating an automatic cloud over other water rights with which they interrelate. This would institute the same mischief this Court sought to avoid in its ruling in *New Mexico*. This Court should review the decision below to reaffirm that water necessary in the West for secondary purposes under the Organic Administration Act of 1897 must be acquired under the appropriation laws of the western states.

IV. THE RULING OF THE CALIFORNIA SUPREME COURT IN THE INSTANT CASE IS CONTRARY TO THE INTERESTS OF SOUND PUBLIC POLICY AND SHOULD BE REVIEWED AND REVERSED.

The ruling below raises significant federal statutory and constitutional questions. Also, it raises issues concerning the uniformity of the federal property rights throughout the Nation. Further, the state supreme court which issued the ruling is influential and its decision may serve as precedent for other state court rulings. This Court has never determined the full extent of federal property interests under the Property Clause. This issue of first impression is of critical importance and should be reviewed by this Court.

In addition, this case is important for a number of other reasons. It will limit the quantity of water available for currently unsatisfied needs in California. Further, it will cast a cloud of uncertainty on existing rights, since such rights may have to be reduced to supply water for previously unused federal riparian rights.

These difficulties are reminiscent of those associated with the federal reserved rights doctrine, particularly before *United States v. New Mexico, supra,* 438 U.S. 696. Few subjects have commanded more attention from legal scholars and more disdain from western state water managers than the reserved rights doctrine. The *New Mexico* decision was heralded by western state officials as a major victory because it limited the scope of the doctrine. The claims of the United States in the instant proceeding are precisely the same in effect as those disallowed by this Court as part of that doctrine.

The decision below will undoubtedly damage California's ability to efficiently manage that state's scarce water resources. The appropriation doctrine is a fundamental tool used by the state to manage and plan for efficient use of water. This is true throughout the West. Congress has realized the importance of state water resource management and has consistently deferred to state appropriative water law. *See, e.g., California v. United States, supra,* 438 U.S. at 653, 654; *United States v. New Mexico, supra,* 438 U.S. 698-705. The United States, as a matter of custom and comity, has participated in the appropriation process to the extent that it has been unable to assert reserved water rights under federal law. *See, e.g., United States v. New Mexico, supra,* 438 U.S. at 703, n.7; *California v. United States, supra,* 438 U.S. 645, 652. The decision below will permit the United States to circumvent the appropriation process in many instances. This will hamper effective water resource planning by state officials.

One additional concern of the amici states is that if the United States has riparian rights for its vast land

holdings, such rights may be asserted by individuals who derive delegated authority under federal statutes which effect water resource management in the West. Indeed, as California has pointed out in its petition for writ of certiorari, private hydroelectric power project applicants for projects located on federal lands have now asserted that the United States has "assigned" its riparian rights to them, and thus they need not comply with California's prior appropriation laws.

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CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant the petition for certiorari.

Respectfully Submitted,

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